IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.549 OF 2005

Khatau Makanji Spinning and
Weaving Mills Limited. ...Petitioner.

Vs.

Regional Provident Fund Commissioner...Respondents.

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Mr.C.U.Singh with Ms.Geetanjali Prabhu for the Petitioner.

Mr.Sureshkumar for the Respondent.

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CORAM : DR.D.Y.CHANDRACHUD, J.

March 9, 2005.

P.C. :

1. Rule, returnable forthwith. Respondents waive service. By consent taken up for hearing and final disposal.

2. The Petitioner has been a manufacturer of

textile products and has industrial units inter alia at Borivali and Byculla in Mumbai. On 21st August 1989, a reference was made to the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985, on the ground that the Company had become sick within the meaning of the Act. A draft scheme for rehabilitation was prepared by the operating agency in January 1995 which was approved by the BIFR on 27th March 1995. The scheme provided for the sale of the land at Borivali subject to the sanction of the Government of Maharashtra and an Assets Sale Committee was to be set up to oversee the modalities of the sale of the land at Borivali. In November 1995, the Petitioner entered into an agreement in respect of the surplus freehold land at Borivali. According to the averments in the Petition, the Government of Maharashtra granted its permission only on 23rd April 1997 by which time, the intending purchaser was not willing to implement the sale on account of a change in the market for real estate, consequent upon which, the agreement was terminated. Workers' dues were, according to the Petitioner, paid till January 1997. The BIFR by an order dated 22nd August 2003 came to the conclusion that the

Petitioner should be wound up. An appeal has been filed before the AAIFR.

3. The dispute in the present case arises out of proceedings adopted against the Petitioner under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("the Act"). On 23rd January 2002, pursuant to proceedings under Section 7A of the Act, the Assistant Provident Fund Commissioner quantified the liability of the Petitioner at Rs.2,33,20,600/- on account of provident fund, family pension fund, insurance fund contribution and administrative charges for the period between March and October 1997. On 12th May 2003, a demand notice came to be issued to the Petitioner in the amount of Rs.3,31,79,464/- comprising of the principal amount of Rs.2.33 crores quantified in the order under Section 7A together with interest of Rs.98.58 lakhs as on 13th May 2003. A notice to show cause was issued in the name of the deceased Managing Director to explain why the provisions for arrest and commitment to a civil prison should not be applied.

4. A warrant of attachment was issued in respect

of the movable property of the Company for securing an amount of Rs.3.42 crores comprising of the amount of Rs.3.31 crores reflected in the demand notice dated 12th May 2003 and subsequent interest of Rs.10.96 lakhs. The movables in the unit at Byculla were thereafter auctioned and on 27th July 2004, the Recovery Officer issued a certificate of sale to the effect that the purchaser had paid an amount of Rs.3.02 crores. Thereafter, a fresh warrant of attachment was issued on 24th August 2004 for an amount of Rs.67,69,831/- comprising of an amount of Rs.29,79,464/- which was due and payable under the order under Section 7A together with interest. The warrant of attachment was levied in respect of movable property of the Company at the Borivali Unit.

5. On 30th September 2004, a notice was issued to the Petitioner calling upon it to explain as to why damages in the amount of Rs.2,33,20,600/- be not imposed under Section 14B of the Act together with the outstanding interest under Section 7Q amounting to Rs.70,43,141/-. The Petitioner submitted a reply on 16th October 2004 contending that a rehabilitation package which was proposed would

emerge upon the decision of the AAIFR. Ultimately, the impugned order dated 10th January 2005 came to be passed by the Assistant Provident Fund Commissioner.

6. In so far as the levy of damages is concerned, Counsel appearing on behalf of the Petitioner urges that the order has been passed mechanically without an application of mind and without a foundation of cogent reasons in support of the imposition of damages. Counsel submitted that the facts which have emerged before the Court would show that an amount of Rs.3.02 crores was realised upon the auction of the movables of the Byculla Unit and though there was an outstanding balance which remained to be due and payable, this was a circumstance which should have been taken into account before imposing damages.

7. Having heard Counsel appearing on behalf of the Petitioner and Counsel appearing on behalf of the Respondent, I am of the view that this is a fit and proper case where the matter should be remanded back for a fresh determination of the question of damages under Section 14B of the Act. A perusal of

the order of the Assistant Provident Fund Commissioner would show that the amount of damages which has been quantified corresponds to the amount which was found to be due and payable in the order under Section 7A that was passed on 23rd January 2002. There has since been a realisation of a substantial part of the amount which was due and payable under the order under Section 7A pursuant to the sale of movables of the Byculla Unit. The sale certificate dated 27th July 2004 shows that an amount of Rs.3.02 crores was paid by the highest bidder. The impugned order imposing damages has been passed mechanically without due regard to the facts and circumstances of the case. An order of damages has serious consequences and it is necessary that it should be supported by reasons; something which is lacking in the present case.

8. In the circumstances, in my view, it would be appropriate to set aside the impugned order dated 10th January 2005, in so far as the imposition of damages is concerned. However, it is clarified that there is no reason for the Court to interfere with the quantification of interest which is in accordance with the provisions of Section 7Q and

which in any event the Petitioner is liable to pay. Subject to the aforesaid, this petition is allowed in part and the impugned order dated 10th January 2005, in so far as the imposition of damages under Section 14B is concerned is quashed and set aside in order to facilitate a fresh determination by the Assistant Provident Fund Commissioner. The Petitioner shall appear before the Assistant Provident Fund Commissioner for directions on 21st March 2005 on which day, the matter would be set down for early disposal. It is, however, clarified that the Assistant Provident Fund Commissioner would be at liberty to proceed in the absence of the Petitioner, should the Petitioner not cooperate in the proceedings in terms of the directions issued hereinabove. The Petition is accordingly disposed of in the aforesaid terms. No order as to costs.

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